

Integrating country of origin into global marketing strategy

A review of US marking statutes

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Abstract *Country-of-origin research has frequently found country markings to affect consumer product evaluations, providing country-of-origin markings a unique opportunity to become an evermore important element in the global strategic mix. However, marketing literature has been delinquent in providing international strategists meaningful aids for obtaining wanted "made in" designations. Therefore, this study provides an examination of the four major legal tests (name, character and use; essence; value added; and article of commerce) which constitute the US marking statutes. Explanations of the tests, with practical examples, are provided to enhance marketing practitioners' abilities for integrating country-of-origin markings into overall global strategic design.*

Introduction

Marketers are cognizant that the country of origin affects consumers product evaluations (Bilkey and Nes, 1982; Erickson *et al.*, 1984; Han, 1989; Han and Terpstra, 1988; Johansson *et al.*, 1985, Al-Sulaiti and Baker, 1998). Country-of-origin effects have been found for general products (Darling and Wood, 1990; Howard, 1989), specific categories of products (Cordell, 1992; Hong and Wyer, 1989, 1990; Roth and Romeo, 1992), and even for certain brands (Chao, 1993; Han and Terpstra, 1988; Haubl, 1996; Tse and Gorn, 1993; Witt, 1990). However, the continued globalization of markets has thrust business into a worldwide pursuit of low-cost, high-quality components and finished goods, repeatedly in areas not noted for the production of these types of products, complicating the use of country of origin in global marketing strategy. It is also becoming commonplace in global sourcing, to call for components of the product to arrive from multiple countries, making it even more difficult to identify any specific country of origin.

Achieving the desired country-of-origin designation has become so confusing that marketing managers are ignoring this key element in the development of global marketing strategy.

Obtaining the appropriate country-of-origin marking for a product can have an acute effect on the success of international products. Current research has shown that country of origin affects consumers' perceptions of product quality

(Hong and Wyer, 1989, 1990; Johansson *et al.*, 1985; Johansson and Thorelli, 1985; Papadopoulos and Heslop, 1993), brand image (Han and Terpstra, 1988; McConnell, 1967; Yaprak, 1987), purchase decisions (Heslop and Papadopoulos, 1993), and the consumer's propensity to use a product's "made in" label (Han and Terpstra, 1988; Johansson *et al.*, 1985; Tse and Gorn, 1993). Likewise, consumers have displayed a willingness to pay higher prices for products originating from desirable locations (Nes and Bilkey, 1993; Schooler and Wildt, 1968). Perceived quality and market entry costs, with tariff rates varying depending on the country marking of the product (Sturm, 1976), can be directly attributed to obtaining an advantageous country marking.

In order to illustrate the strategic applications, let us use the USA as an example to see why a company might want its products stamped as "Made in America." It could be that there are tariffs or quotas in effect, for goods coming into the USA which are predicated on the particular country of origin, which would be eliminated if the products could be considered to be made domestically. It may also be that the perceptions of the consumers in that particular target market are affected by the country-of-origin markings. In the USA, there are many attempts to affect consumer purchase behavior through such non-tariff barriers as "Buy National" campaigns. In these instances, subtle leverage would be applied to the consumer to buy only those goods "Made in America."

One can easily see this in American industrial advertising campaigns for the garment industry, for example. The focal point of the advert is to look for the "Made in America" label inside clothing items. This type of quiet leverage on consumer purchases could have a negative impact on sales of foreign clothing items in the USA. If a foreign manufacturer could get its items labeled as "Made in America," their chances for success in this segment of the US market would be enhanced.

From the other side of the argument regarding country of origin, it may also be that the company would be best served by not having its goods marked as "Made in America." One example of this can be seen in the high quality perceptions of US consumers toward products made in Japan or Germany. It may be that goods from these countries would automatically be afforded perceptual quality simply based upon the perceived country of origin. Certainly, US carmakers have heavily relied on improved perceptions after announcements of joint ventures with Japanese carmakers. Sometimes, even confusion over the country-of-origin markings can help, as was the case when the Saturn was introduced, since many Americans thought that it was a Japanese car.

It might also be that there are strained relations between two countries which would argue for a careful assessment of the impact of country-of-origin markings. In this situation, it might be strategically beneficial to use a third-country stamping to avoid negative governmental as well as consumer sentiment. In these instances it might not be best to have the product stamped as "Made in America."

Purpose of the study

Resourceful marketers can use marking statutes to develop proactive strategies which provide the entire benefit of country of origin. An enhanced understanding of how to obtain the desired country-of-origin designation could acutely improve a marketer's ability in international strategy development. Yet, while the current literature clearly indicates that these markings have an impact on consumer product perceptions, there is little, if anything, which examines the actual legal issues involved in obtaining desired country-of-origin markings, thereby, providing global marketing managers real action-oriented strategic choices. Further, international marketing texts stress the importance of understanding the political/legal environment of potential markets; however, once again, there is little that focuses on the legal identification of relevant statutes or precedents pertaining to the awarding of coveted "made in" labels. Therefore, it is the purpose of this study to review US Civil Code regarding the designation of country of origin for products entering the USA and to provide global marketing managers guidance in obtaining appropriate product markings. As the USA is the world's largest consumer market, and US country-of-origin markings approach the global WTO marking classifications founded on "substantial transformation," this article will illustrate the four major legal tests for country marking and explain how to use each to obtain the optimal country-of-origin designation. As a legal heuristic is developed, the marketer is released to use the tests to strategically assess country-of-origin markings for an optimal product configuration, thus, integrating country of origin into global marketing strategy.

Background

The requirement that imported goods be marked with the country of origin first appeared in the Tariff Act of 1890 and has been included in subsequent Tariff Acts. The purpose of the marking statute was to advise the ultimate purchaser in the USA of the foreign origin of goods. Congress had the power to impose this requirement on imported goods as an exercise of Constitutional power over commerce with foreign nations (US Const. Art. I, §8, cl. 3)[1].

The US marking statutes provide that, with certain exceptions, articles of foreign origin are to be marked with the country of origin in some manner. In general, the country-of-origin statute requires that every article or container of foreign origin imported into the USA be marked, legibly, indelibly and permanently, to indicate to the ultimate purchaser the English name of the country where the product originated (Moore, 1996). The country of origin is defined in the US Code of Federal Regulations at 19 C.F.R. §134.1(b). This section provides:

(b) *Country of Origin*. "Country of origin" means the country of manufacture, production, or growth of any articles of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part: however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

The country of origin is determined by looking to the nature of the good being imported and the processes it has gone through and whether it has been substantially transformed.

Recent developments in the harmonization of the rules of origin, as stipulated in the Uruguay Round of the WTO, have stipulated that the development of a non-preferential system of country-of-origin marking be developed based upon the long standing doctrine of “substantial transformation.” These tests of transformation, which US Customs have relied upon for many years, will form the basis, for the first time ever, of a standardized determination for country-of-origin markings. It is hoped, that in the next three years, that the world will operate with a single, impartial, predictable, consistent and neutral set of product making rules, based upon the legal precedent discussed below.

Tests of transformation

When goods are processed outside of the USA and imported into the USA, the determination of the appropriate country-of-origin markings will depend on where substantial transformation of that product occurred. If there is more than one transformation, US federal courts will make their determination based on where the last substantial transformation takes place. There are four tests which US courts have used to determine whether substantial transformation has occurred:

- (1) the name, character and use test;
- (2) the essence test;
- (3) the value added test; and
- (4) the article of commerce test.

One or more of these tests could be strategically beneficial in attempting to get desired country-of-origin markings. Each of the tests is discussed below.

Name, character and use test

The test most used is the name, character and use test. If a product is to be considered to have been substantially transformed using this test, it is supposed to have been transformed into something different with a unique name, character or use. The end product must be significantly different from the separate materials that went into the manufacturing process.

A good example of this test can be seen in the case of *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940). This case involved hair brushes and the substantial transformation was caused when wooden handles stamped “Made in Japan” were configured into a hair brush with bristles attached by the manufacturer. The “Made in Japan” label was actually obliterated when the final product was produced and the US Customs Service wanted the handle restamped with “Made in Japan” so that US consumers would know that the handle was manufactured in Japan. On appeal, the court determined that the

manufacturing process involved the creation of something new and different since the handle would not be used by itself. The finding was that since the handle was substantially transformed into a new product with a unique name, character and use, the name Japan was allowed to be removed from the product and not restamped. If the article loses its identity and becomes a new article the name, character and use test would apply. The marketer can have the product emerge from the preferred country of origin with an altered identity such that it has a new name, character, or use.

The essence test

The issue for this substantial transformation test is that the imported part actually gets incorporated in the final product and becomes the “essence” of that finished product. For this to happen, the following conditions must be met:

- the part must be functionally necessary and not simply decorative or complementary;
- the part must have no commercial value by itself;
- the part must have become a part of the finished good through a process requiring some degree of skill; and
- the removal of the part from the finished good would destroy either the part or the finished good.

To find a classic example of the essence test, one can turn to the case of *Grafton Spools, Ltd v. United States*, 45 Cust. Ct. 16, 223 C.D. 2190 (1960). The issue in the case involved a typewriter ribbon manufacturer who imported typewriter ribbon spools from a country whose name was not advantageous to have marked on the spools as the country of origin. Grafton Spools imported the spools into the USA where the ribbons were then wrapped on the spools. The company was concerned that if a foreign country of origin were marked on the spools, it would be detrimental to the image of the final product and could detract from domestic sales. On appeal, the court held that the spools became an integral part (or essence of) the new product which was created, a typewriter ribbon. The spools themselves were the mechanism to sell the ribbon, and the ribbon was the major feature of interest to the consumer. This test established the ability of the importer to save on the production cost of the spool and to achieve the desired country-of-origin marking by not having to mark the spools with the original country of manufacture.

The value test

This test assumes that neither the imported nor domestic component has value on its own merits. The value is created when the components are combined into a finished good. In this situation, the value added is determined by the demand for the finished good by the consumer as a result of the combination of the components without the necessity of undergoing a substantial transformation. US courts have decided these types of cases by determining the costs incurred

by each country involved in producing a component of the finished good. The reasoning has been that the component which incurred the greatest cost would contribute the greatest value to the finished good, and that would determine the country of origin.

A definitive example of this test can be seen in the decision in *Uniroyal, Inc. v. United States*, 542 F. Supp. 1026 (1982). This case involved an American shoe company that imported the upper part of the shoe (the stylized body of the shoe) from a foreign country. This part of the shoe was produced at a considerable cost. The American Company took the uppers and combined them with its own home produced soles and marked the final shoes "Made in America." In this case, the upper stylized body of the shoe manufactured in the foreign country was considered the essence of the shoe and the more expensive component to produce. The country of origin was considered the place where the higher costs were incurred, which was the foreign country. The upper part was considered to have the greater impact on the desirability of the final product to the consumer. As a result, Uniroyal had to remark the shoes, which cut considerably into its profits.

Uniroyal reached an interesting solution in this case as reported in Serko (1985). In conjunction with the Customs Service, Uniroyal imported the upper part of the shoe with a portion of the heel removed causing a substantial transformation that would subsequently have to take place in the USA. The additional costs from processing allowed the finished shoes to subsequently be marked as "Made in America," allowing the manufacturer to achieve the desired marking.

To fall under the category of value added test, the component which is of major interest to the consumer and is the most costly to produce, would be produced in the country of origin. The marketer desiring to have the final product marked with a specific country of origin should have the component which is attractive to the consumer and most costly to produce manufactured in the desired country of origin.

The article of commerce test

The final test is the article of commerce test and its purpose is to determine whether a brand new article of commerce has actually been created as a result of the finishing process applied to the imported parts or components. This test is of particular importance when determining the country-of-origin marking requirements of products like computers or calculators where electronic circuits are involved in the finished process.

An example of the use of this test can be seen in the case of *Texas Instruments, Inc. v. United States*, 691 F.2d 778 (1982). In this case the manufacturer imported a number of components from Taiwan which had been created from materials imported from a number of other foreign countries, including the USA, and final assembly was done in the USA. The goal for the

manufacturer was to use “Made in Taiwan” on the final product so there would be duty free savings because Taiwan was considered a beneficiary developing country.

Here, the imported materials were created in Taiwan into a new article of commerce, a calculator, but the operations required to create a final product of use to the consumer was done in the USA. A number of employees in the USA who had extensive training were needed to complete assembly of the components into a finished article which was able to function. In this case, the problem that was encountered was that the components which were finished in Taiwan were of no value to the end US consumer. The work that was required and the skilled labor involved produced a product that was not able to be marked as “Made in Taiwan” as the manufacturer had hoped. The court distinguished a “producer’s good” which was not capable of being used by the retail consumer from a “consumer’s good” which was a good which had value and use to the consumer when reaching its decision.

In order to obtain the desired country-of-origin effect pursuant to the article of commerce test, the product must be transformed from a producer’s good into a retail consumer’s good in the specific country desired to be the country of origin. The importer or marketer needs to consider two criteria:

- (1) where was the article transformed from a “producer’s good” to a “consumer’s good”; and
- (2) have the operations underlying the asserted transformation effected a change in the classification of the merchandise under the Tariff Schedules of the USA?

Country-of-origin criteria

The two main criteria for determining country of origin, considered to be a new and different article of commerce, are:

- (1) Was the article materially altered in the country of origin?
- (2) Has the underlying transformation process created a product whereby the components are functionally necessary or integral to the workings of the overall product?

Answers to these fundamental questions would provide guidance to a marketing manager attempting to determine how to maximize the benefits of country of origin for the item. Figure 1 shows how the four main tests may be used as a guide when determining where a substantial transformation has occurred utilizing alteration criteria.

A component is functionally necessary when it is required in the finished product to operate or run or is the vehicle to make the finished product usable. Integral means that the part becomes part of the finished product such that removal of the part would destroy both the part and the finished product. The degree of labor/technology used in the transformation will also play a determining factor in the transformation decision.

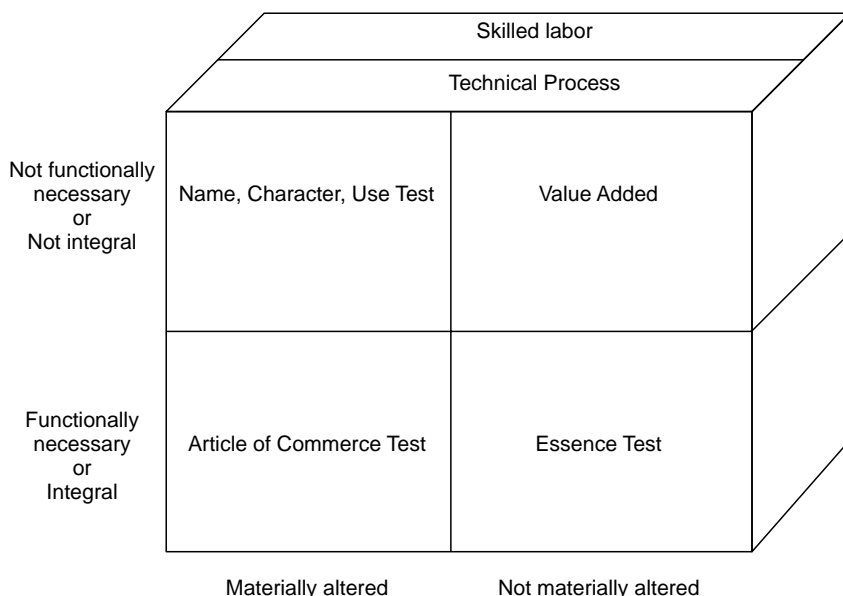


Figure 1.
Four main tests to
determine where a
substantial
transformation has
occurred

A manufacturer or marketer should look carefully at the processes being used and/or what effect the foreign part will have on the ultimate product being made. Each situation will call for a different analysis and it is important that the manufacturer or marketer look at the current law relating to country-of-origin marking requirements. In addition, there may be special trade agreements in effect, countries designated as beneficiary developing countries, and duty-free rules relating to countries which are insular possessions of the USA.

Customs considerations

An important aspect of country-of-origin markings is the accompanying customs duty considerations which can certainly affect profitability and market acceptance of your products. Most customs duties are based on a percentage of the value of the imported merchandise. Therefore, the value of the goods may be a major factor in the amount of duties assessed (Sturm, 1976). The importer may be concerned with country of origin as it may have a direct impact on the cost of his goods. If an importer or marketer is not concerned with what country of origin is marked on the product but is interested in using foreign labor or foreign components to lower cost and increase profitability, then he should consider obtaining those items from countries which have special consideration.

For example, the United States Generalized System of Preference (GSP) allows duty-free entry for certain eligible products from a country designated as a beneficiary developing country (BDC). This allows manufactured or semi-manufactured goods to enter the country duty free or with tariff preferences. In

addition, there are countries which have special trade agreements such as NAFTA and insular possessions of the USA which can export to the USA duty free if certain rules of origin are satisfied. Finally, there is a J-List contained in the customs regulations which lists articles which are exempted from individual markings.

There are civil and criminal penalties for violations of the country-of-origin marking requirement. These include attempting to import merchandise with false documents. In addition, liquidated damages can be paid on merchandise properly marked outside the marking period. Customs has mitigation guidelines in connection with marking violations based on appraised value of merchandise and number of violations (Serko, 1991).

Practical strategic issues

Marketers can only begin to devise effective strategic uses of country marking statutes when they develop a complete understanding of how country-of-origin markings are prescribed and the potential customs considerations of their actions. A mastery of the tests of transformation, which confer marking applications, will make marketers better prepared to devise “transformation strategies” which blend the advantages of global sourcing with the desired country of origin to achieve maximum benefit. If an importer or marketer wishes to obtain a specific country-of-origin effect for imported articles, one or more of the four tests may assist in determining how to proceed.

Skillful transformation of the product as it enters the desired market could assure the product of the desired country of origin marking. It is evident from these four tests, the courts will be guided to a determination of the country of origin based on the processes the articles have undergone en route to the USA and the use of the products in the USA. For example, an importer or marketer of personal computers would look at what foreign components and/or labor is needed to manufacture the product. In addition, it would be necessary to look at the potential consumer market and make a determination regarding the consumer’s perception about foreign products versus domestic products. Once these two decisions are made, and depending upon what is shown by the research, the marketer should choose to have the imported article undergo its last substantial transformation where the fundamental characteristics of the product will be materially altered, where the product will be transformed from a producer’s good to a consumer good, or where the components will become integral to the final product. In this example, it might be advantageous to provide the final transformation of the components, on US territory, to obtain the “Made in America” marking for the overall computer. Cost savings can be obtained through the manufacture of components on foreign soil, while still obtaining the country of origin matching the consumer perception. If the manufacturer employs some skilled labor, to engage in a recognized technical process in the US market, additional leverage will be obtained in achieving a “Made in America” label. To assure complete coverage of the issue, the following questions should be asked:

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- (1) What is the product being marketed?
 - (2) Who are the potential consumers and what are their beliefs or perceptions about foreign products versus domestic products?
 - (3) What is the preferred country of origin for the product?
 - (4) How can the product be manufactured to obtain the desired country-of-origin effect?

A review of
US marking
statutes

123

Conclusions

Country-of-origin markings as they would apply to products, or even components, can be an effective strategic tool for global marketers. A company should consider the information which is conveyed through country-of-origin markings to the target markets in that country, when assessing a foreign market as a new product outlet. Markings should be carefully assessed for the potential information which they provide to prospective buyers as well as the political considerations which might apply (e.g. taxes, tariffs, and quotas). Marketers may want to see which approach is acceptable in the greatest number of potential target markets to use as a base for strategic marking decisions. Once the decision is made, the specific tests of transformations discussed in this paper can be used to facilitate the favored country-of-origin markings.

It is the purpose of this article to discuss the specific legal statutes employed by the US government which affect country-of-origin markings. Global marketers would be well advised to understand the marking statutes in any of the countries in which they plan to sell their products. The marketing of the product and potential import tariffs may be dependent on what marking requirements, if any, are placed on the final product[2]. The federal courts look at each product, however, the four tests previously described have emerged as the main tests used in determining country of origin, and serve as a foundation for WTO designations.

By understanding the regulations which stipulate country-of-origin markings, marketers will have greater ability to achieve the desired country-of-origin designations for products. This enhanced knowledge will increase the flexibility of marketers to balance global sourcing opportunities, customs disparities, and consumer perceptions. The four tests of transformation, discussed in this paper, offer marketers the tools required to direct their product's transformation. Global strategy development will be improved as marketers take a proactive role in the transformation of their products to achieve a desirable country-of-origin marking.

Notes

1. The current marking statute, found at 19 United States Code §1304, provides for marking imports with the country of origin with certain exceptions. Regulations implementing the country of origin marking requirements can be found at 19 Code of Federal Regulations §134 *et seq.*

2. It should be noted here that this paper was written from the perspective of the US Marking Statutes. Each country may have its own way of dealing with country-of-origin markings, and the international strategic marketer should be cognizant of marking regulations in all possible foreign target markets.

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International
Marketing
Review
17,2
126

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